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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,727	11/12/2003	Richard P. Hodges	#10422	2134

7590 04/26/2005  
John S. Christopher, Esq.  
Suite #400  
6033 West Century Blvd.  
Los Angeles, CA 90045

EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/712,727	HODGES, RICHARD P.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Luan K Bui	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

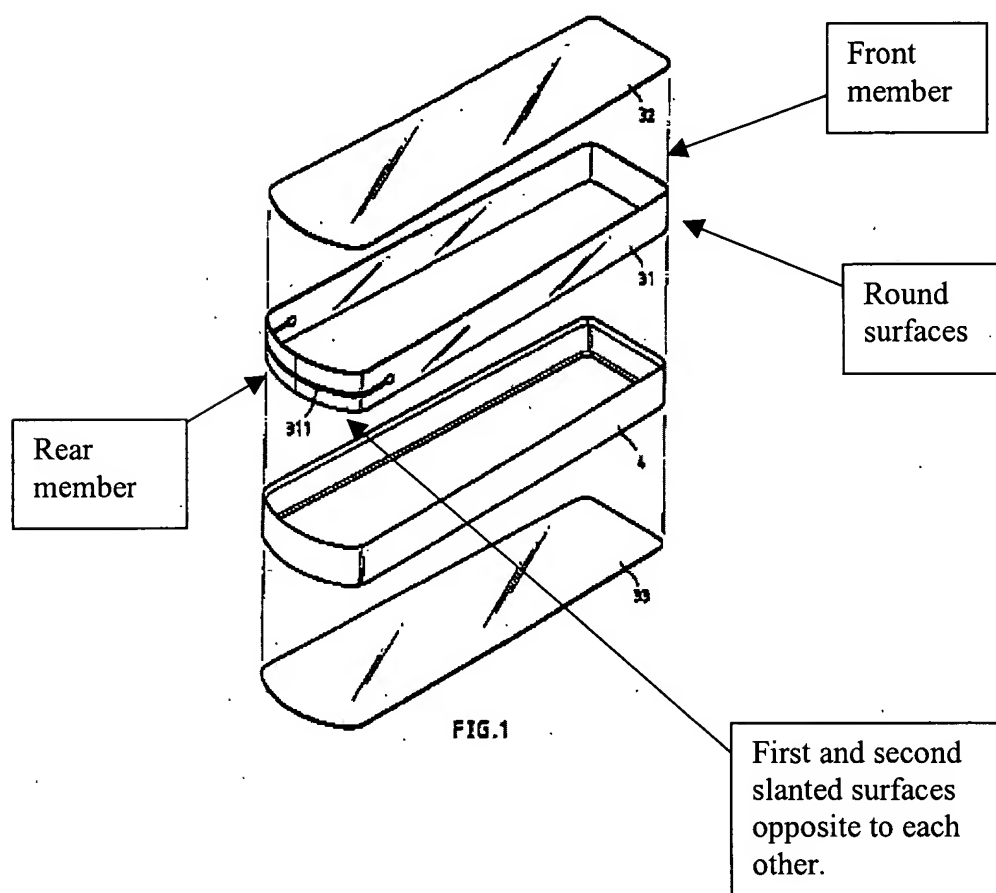
1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 9, 11, 13, 15 and 16 are finally rejected under 35 U.S.C. 103(a) as obvious over Tzeng I6,471,056). Tzeng discloses a cover (3) for use with a remote control device comprising a front member having a continuously flat surface, a rear member integrally formed with the front member at a plurality of rounded surfaces (four corners) to form an enclosure (see below), and an orifice (311) formed in and parallel to an oblong dimension of the rear member for enabling a remote control device to be inserted into and removed from the enclosure. The front member, the rear member and the rounded surfaces comprise of a flexible, stretchable and transparent material such as PVC for conforming to the shape of the remote control device and for providing a sanitation barrier. Tzeng also discloses the other limitations of the claims except for the front and rear members being molded in a unitary, one-piece construction. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Tzeng to modify the cover so the front and rear members are integrally molded in a unitary, one-piece construction to form the cover to reduce the steps of construction and to reduce the cost of manufacture and since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). As to claim 9, the cover of Tzeng is made from PVC so the cover is disposable. As to claim 11, Tzeng discloses the curved surface formed along an

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oblong dimension of the rear member. As to claim 13, the rear member of Tzeng comprises a converging surface including a first slanted surface (on one side along the center of the rear member) and a second slanted surface (opposite side of the first slanted surface).



3. Claims 2, 3, 5-8, 12, 14 and 17 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claims 1, 11, 13 and 15 above, and further in view King (4,901,852) and Derr et al. (6,634,494; hereinafter Derr'494). Tzeng further fails to show the cover being formed from a polyurethane compound or latex or rubber or silicon or styrenic elastomer as recited in claims 2-8. King teaches a protective cover for a pager formed from a film of transparent stretchable plastic such as silicon plastic. Derr'494 shows a protective cover

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for holding a device and the cover formed from a transparent soft PVC or elastomers or polyurethane. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of King and Derr'494 to modify the cover of Tzeng so the cover is comprised of polyurethane or latex or rubber or silicon or styrenic elastomer as recited in claims 2-8 since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Response to Arguments***

Applicant's arguments with respect to 3/7/2005 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant argues "strip 31 having the four corners of Tzeng'056 do not form an enclosure ... as recited in Applicant's amended Claims 1, 11, 13 and 15" is noted. This is not persuasive because the term "comprising" as recited in claims 1, 11, 13 and 15 is an open-ended transitional term and does not exclude additional, unrecited elements (MPEP 2111.03) such as the top and bottom panels (32, 33) and the strip 31 of Tzeng'056 to form an enclosure.

Applicant argues "The insertion slot 311 of Tzeng'056 is not an orifice formed in and parallel to an oblong dimension of the rear member of Applicant's inventive cover" is noted. This is not persuasive because the slot 311 is considered equivalent to an orifice as claimed and

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the slot is formed along the longitudinal dimension of the rear member which is considered equivalent to in parallel to oblong dimension of the rear member as claimed.

Applicant's arguments with respect to the converging surface in the remarks are noted. They are also not persuasive because the rear member (as indicated above) is curved on both sides from the center to each corner and those curves are considered equivalent to the converging surface as claimed.

Applicant argues that Tzeng'056 fails to teach "claim 15 recites a rear member 306 having a flat rectangular surface ..." is noted. This is not persuasive because Tzeng'056 discloses in the embodiment of Figure 7 that the rear member comprises a flat rectangular surface and an orifice.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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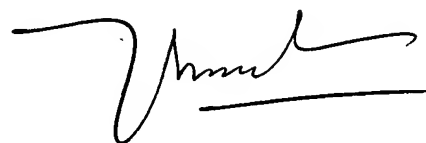
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb  
April 21, 2005

A handwritten signature in black ink, appearing to read 'Luan K. Bui', with a horizontal line underneath.

Luan K. Bui  
Primary Examiner